

1 JOSEPH H. HUNT
2 Assistant Attorney General
3 Civil Division

4 WILLIAM C. PEACHEY
5 Director, District Court Section
6 Office of Immigration Litigation

7 GLENN M. GIRDHARRY
8 Assistant Director

9 ELIZABETH D. KURLAN
10 Trial Attorney
11 United States Department of Justice
12 Civil Division
13 Office of Immigration Litigation - District Court Section
14 P.O. Box 868, Ben Franklin Station
15 Washington, DC 20044

16 *Counsel for Defendants*

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF OREGON

19 LUDOVIC PIERRE BERARDO,

20 Plaintiff,

21 v.

22 UNITED STATES CITIZENSHIP AND
23 IMMIGRATION SERVICES, *et al.*,

24 Defendants.

25 Case No. 3:19-cv-01796-SB

26 **DEFENDANT'S ANSWER TO
27 PLAINTIFF'S FIRST AMENDED
28 COMPLAINT**

29 Hon. Stacie F. Beckerman

1 Defendants, without waiving any affirmative defenses to which they may be entitled,
2 submit their Answer to Plaintiff's First Amended Complaint, ECF No. 13. Matters specifically
3 not admitted are denied. The numbered paragraphs and headings below correspond to the
4 numbered paragraphs and headings set out in Plaintiff's First Amended Complaint.

5 **JURISDICTION**

6 1. Paragraph 1 consists of Plaintiff's legal conclusions regarding the Court's
7 jurisdiction, which does not require a response. If the Court requires a response, Defendants
8 admit that the Court has subject matter jurisdiction over this matter.

9 **VENUE**

10 2. Paragraph 2 consists of Plaintiff's legal conclusions relating to venue, which does
11 not require a response. If the Court requires a response, Defendants admit venue is proper in the
12 District of Oregon.

13 **PARTIES**

14 3. Defendants lack knowledge or information sufficient to answer the allegation in
15 Paragraph 3 and, therefore, denies that allegation.

16 4. Defendants admit the allegation in Paragraph 4.

17 5. Defendants admit the allegations in Paragraph 5.

18 **STATUTORY BACKGROUND**

19 6. Paragraph 6 consists of Plaintiff's legal characterization of a statute relating to the
20 Immigration and Nationality Act's ("INA") statutory provision for immigrant classification as
21 "aliens of extraordinary ability," which does not require a response. If the Court requires a
22 response, Defendants admit the allegations in Paragraph 6.

7. Paragraph 7 consists of Plaintiff's legal characterization of a statute relating to the INA, which does not require a response. If the Court requires a response, Defendants admit the allegation in Paragraph 7.

8. Paragraph 8 consists of Plaintiff's legal characterization of regulations relating to immigrant classification as "aliens of extraordinary ability," which does not require a response. If the Court requires a response, Defendants admit the allegation in Paragraph 8.

9. Paragraph 9 consists of Plaintiff's citation to a regulation, which does not require a response. If the Court requires a response, Defendants admit the allegation in Paragraph 9.

10. Paragraph 10 consists of Plaintiff's legal characterization of the statute and regulation relating to immigrant classification as "aliens of extraordinary ability," which does not require a response. If the Court requires a response, Defendants deny the allegations in Paragraph 10.

11. Paragraph 11 consists of Plaintiff's legal characterizations, which does not require a response. If the Court requires a response, Defendants admit the allegation in Paragraph 11.

FACTS

12 Defendants admit the allegations in Paragraph 12.

13 Defendants admit the allegations in Paragraph 13.

14. Defendants admit the allegation in Paragraph 14.

15. Defendants deny the allegation in Paragraph 15.

16. Defendants admit the allegation in Paragraph 16.

17 Defendants admit the allegation in Paragraph 17

18 Defendants admit the allegation in Paragraph 18

19 Defendants deny the allegation in Paragraph 19

1 20. Defendants admit the allegations in Paragraph 20.

2 21. Defendants deny the allegations in Paragraph 21.

3 22. Defendants admit the allegations in Paragraph 22.

4 23. Defendants deny the allegations in Paragraph 23.

5 24. Defendants admit the allegations in Paragraph 24.

6 25. Defendants deny the allegation in Paragraph 25.

7 26. Defendants admit the allegations in Paragraph 26.

8 27. Defendants deny the allegations in Paragraph 27.

9 28. Paragraph 28 consists of Plaintiff's characterization of the evidence submitted to

10 U.S. Citizenship and Immigration Services ("USCIS"), which does not require a response. If the

11 Court requires a response, Defendants deny Plaintiff's characterization of the evidence.

12 29. Paragraph 29 consists of Plaintiff's characterization of the evidence submitted to

13 USCIS, which does not require a response. If the Court requires a response, Defendants deny

14 Plaintiff's characterization of the evidence.

15 30. Defendants deny the allegation in Paragraph 30.

16 31. Defendants deny the allegation in Paragraph 31.

17 32. Defendants deny the allegation in Paragraph 32.

18 33. Defendants admit the allegations in Paragraph 33.

19 34. Defendants deny the allegations in Paragraph 34.

20 35. Defendants admit the allegation in Paragraph 35.

21 36. Defendants deny the allegation in Paragraph 36.

22 37. Defendants deny the allegation in Paragraph 37.

23 38. Defendants deny the allegations in Paragraph 38.

- 1 39. Defendants deny the allegation in Paragraph 39.
- 2 40. Defendants deny the allegation in Paragraph 40.
- 3 41. Defendants deny the allegation in Paragraph 41.
- 4 42. Defendants admit the allegations in Paragraph 42.
- 5 43. Defendants admit the allegation in Paragraph 43.
- 6 44. Defendants deny the allegations in Paragraph 44.
- 7 45. Defendants deny the allegations in Paragraph 45.
- 8 46. Defendants deny the allegations in Paragraph 46.
- 9 47. Defendants deny the allegation in Paragraph 47.
- 10 48. Defendants deny the allegations in Paragraph 48.
- 11 49. Defendants deny the allegation in Paragraph 49.
- 12 50. Defendants deny the allegation in Paragraph 50.
- 13 51. Defendants deny the allegation in Paragraph 51.
- 14 52. Defendants admit the allegations in Paragraph 52.
- 15 53. Defendants deny the allegation in Paragraph 53.
- 16 54. Defendants deny the allegations in Paragraph 54.
- 17 55. Defendants admit the allegations in Paragraph 55.
- 18 56. Defendants admit the allegation in Paragraph 56.
- 19 57. Defendants deny the allegation in Paragraph 57.
- 20 58. Defendants deny the allegation in Paragraph 58.
- 21 59. Defendants deny the allegation in Paragraph 59.
- 22 60. Defendants admit the allegations in Paragraph 60.
- 23 61. Defendants admit the allegation in Paragraph 61.
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1 62. Defendants admit the allegations in Paragraph 62.

2 63. Defendants deny the allegation in Paragraph 63.

3 64. Defendants admit the allegation in Paragraph 64.

4 65. Defendants deny the allegation in Paragraph 65.

5 66. Defendants deny the allegations in Paragraph 66.

6 67. Defendants admit the allegation in Paragraph 67.

7 68. Defendants deny the allegations in Paragraph 68.

8 69. Defendants admit the allegations in Paragraph 69.

9 70. Defendants admit the allegation in Paragraph 70.

10 71. Defendants admit the allegation in Paragraph 71.

11 72. Defendants admit the allegations in Paragraph 72.

12 73. Defendants deny the allegations in Paragraph 73.

13 74. Defendants deny the allegations in Paragraph 74.

14 75. Defendants deny the allegations in Paragraph 75.

15 76. Defendants admit the allegations in Paragraph 76.

16 77. Defendants admit the allegation in Paragraph 77.

17 78. Defendants admit the allegation in Paragraph 78.

18 79. Defendants deny the allegations in Paragraph 79.

19 80. Defendants admit the allegation in Paragraph 80.

20 81. Paragraph 81 consists of Plaintiff's characterization of the evidence and USCIS's

21 decision to deny his petition, which does not require a response. If the Court requires a response,

22 Defendants deny Plaintiff's characterization of the evidence and the agency's decision.

23 82. Defendants deny the allegation in Paragraph 82.

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1 83. Defendants deny the allegations in Paragraph 83.

2 84. Defendants deny the allegations in Paragraph 84.

3 85. Defendants deny the allegation in Paragraph 85.

4 86. Defendants deny the allegations in Paragraph 86.

5 87. Defendants deny the allegation in Paragraph 87.

6 88. Paragraph 88 consists of Plaintiff's legal conclusion, which does not require a
7 response. If the Court requires a response, Defendants deny the allegations in Paragraph 88.

8 89. Defendants deny the allegation in Paragraph 89.

9 90. Defendants admit the allegation in Paragraph 90.

10 91. Defendants admit the allegation in Paragraph 91.

11 92. Defendants admit the allegation in Paragraph 92.

12 93. Paragraph 93 consists of Plaintiff's characterization of USCIS's decision to deny
13 his petition, which does not require a response. If the Court requires a response, Defendants deny
14 Plaintiff's characterization of the agency's decision.

15 94. Defendants admit the allegation in Paragraph 94.

16 95. Defendants deny the allegations in Paragraph 95.

17 96. Defendants deny the allegations in Paragraph 96.

18 97. Paragraph 97 consists of Plaintiff's characterization of the evidence, which does
19 not require a response. If the Court requires a response, Defendants deny Plaintiff's
20 characterization for the reasons set forth in the agency's decision denying his petition, dated
21 April 3, 2020.

22 98. Defendants lack knowledge or information sufficient to answer the allegation in
23 Paragraph 98 and, therefore, deny that allegation.

1 99. Defendants lack knowledge or information sufficient to answer the allegation in
2 Paragraph 99 and, therefore, deny that allegation.

3 100. Defendants lack knowledge or information sufficient to answer the allegation in
4 Paragraph 100 and, therefore, deny that allegation.

5 101. Defendants lack knowledge or information sufficient to answer the allegation in
6 Paragraph 101 and, therefore, deny that allegation.

7 102. Defendants lack knowledge or information sufficient to answer the allegation in
8 Paragraph 102 and, therefore, deny that allegation.

9 103. Defendants lack knowledge or information sufficient to answer the allegation in
10 Paragraph 103 and, therefore, deny that allegation.

11 104. Defendants lack knowledge or information sufficient to answer the allegation in
12 Paragraph 104 and, therefore, deny that allegation.

13 105. Defendants lack knowledge or information sufficient to answer the allegation in
14 Paragraph 105 and, therefore, deny that allegation.

15 106. Defendants lack knowledge or information sufficient to answer the allegation in
16 Paragraph 106 and, therefore, deny that allegation.

17 107. Paragraph 107 consists of Plaintiff's characterization of the evidence and
18 USCIS's decision, which does not require a response. If the Court requires a response,
19 Defendants deny Plaintiff's characterization for the reasons set forth in the agency's decision
20 denying his petition, dated April 3, 2020.

21 108. Defendants admit the allegations in Paragraph 108.

22 109. Defendants admit the allegations in Paragraph 109.

23 110. Defendants admit the allegations in Paragraph 110.

1 111. Defendants deny the allegation in Paragraph 111.

2 112. Paragraph 112 consists of Plaintiff's general legal characterization, which does
3 not require a response. If the Court requires a response, Defendants deny the allegations in
4 Paragraph 112.

5 113. Defendants deny the allegation in Paragraph 113.

6 114. Defendants deny the allegations in Paragraph 114.

7 115. Paragraph 115 consists of Plaintiff's characterization of USCIS's decision to deny
8 his petition, which does not require a response. If the Court requires a response, Defendants deny
9 Plaintiff's characterization of the agency's decision.

10 116. Defendants lack knowledge or information sufficient to answer the allegation in
11 Paragraph 116 and, therefore, deny that allegation.

12 117. Paragraph 117 consists of Plaintiff's characterization of USCIS's decision to deny
13 his petition, which does not require a response. If the Court requires a response, Defendants deny
14 Plaintiff's characterization of the agency's decision.

15 118. Defendants admit the allegation in Paragraph 118.

16 119. Paragraph 119 consists of Plaintiff's characterization of USCIS's decision to deny
17 his petition, which does not require a response. If the Court requires a response, Defendants deny
18 Plaintiff's characterization of the agency's decision.

19 120. Defendants admit the allegation in Paragraph 120.

20 121. Paragraph 121 consists of Plaintiff's characterization of USCIS's decision to deny
21 his petition, which does not require a response. If the Court requires a response, Defendants deny
22 Plaintiff's characterization of the agency's decision.

23 122. Defendants admit the allegations in Paragraph 122.

123. Paragraph 123 consists of Plaintiff's characterization of USCIS's decision to deny
1 his petition, which does not require a response. If the Court requires a response, Defendants deny
2 Plaintiff's characterization of the agency's decision.

124. Defendants deny the allegation in Paragraph 124.

125. Defendants admit the allegations in Paragraph 125.

126. Defendants deny the allegation in Paragraph 126.

127. Defendants deny the allegation in Paragraph 127.

128. Defendants admit the allegation in Paragraph 128.

129. Defendants admit the allegation in Paragraph 129.

130. Defendants deny the allegation in Paragraph 130.

131. Defendants lack knowledge or information sufficient to answer the allegation in
14 Paragraph 131 and, therefore, deny that allegation.

132. Defendants lack knowledge or information sufficient to answer the allegation in
16 Paragraph 132 and, therefore, deny that allegation.

133. Paragraph 131 consists of Plaintiff's characterization of the evidence, which does
19 not require a response. If the Court requires a response, Defendants deny Plaintiff's
20 characterization of the evidence.

134. Defendants admit the allegation in Paragraph 134.

135. Defendants deny the allegations in Paragraph 135.

136. Defendants deny the allegations in Paragraph 136.

137. Defendants deny the allegation in Paragraph 137.

138. Defendants lack knowledge or information sufficient to answer the allegation in
27 Paragraph 138 and, therefore, deny that allegation.

139. Defendants deny the allegation in Paragraph 139.

140. Paragraph 140 consists of Plaintiff's characterization of USCIS's decision to deny
2 his petition, which does not require a response. If the Court requires a response, Defendants deny
3 Plaintiff's characterization of the agency's decision.

141. Defendants deny the allegations in Paragraph 141.

142. Defendants deny the allegations in Paragraph 142.

143. Defendants deny the allegations in Paragraph 143.

144. Defendants deny the allegations in Paragraph 144.

145. Defendants deny the allegation in Paragraph 145.

146. Defendants admit the allegations in Paragraph 146.

147. Defendants deny the allegation in Paragraph 147.

148. Defendants deny the allegation in Paragraph 148.

149. Defendants deny the allegation in Paragraph 149.

150. Defendants deny the allegation in Paragraph 150.

151. Defendants admit the allegation in Paragraph 151.

152. Paragraph 152 consists of Plaintiff's characterization of USCIS's decision to deny
2 his petition, which does not require a response. If the Court requires a response, Defendants deny
3 Plaintiff's characterization of the agency's decision.

153. Defendants admit the allegation in Paragraph 153.

154. Defendants admit the allegation in Paragraph 154.

155. Defendants deny the allegation in Paragraph 155.

1 156. Paragraph 156 consists of Plaintiff's characterization of USCIS's decision to deny
2 his petition, which does not require a response. If the Court requires a response, Defendants deny
3 Plaintiff's characterization of the agency's decision.

4 157. Defendants admit the allegations in Paragraph 157.

5 158. Defendants admit the allegation in Paragraph 158.

6 159. Defendants admit the allegations in Paragraph 159.

7 160. Defendants admit the allegation in Paragraph 160.

8 161. Paragraph 161 consists of Plaintiff's characterization of the evidence, which does
9 not require a response. If the Court requires a response, Defendants deny Plaintiff's
10 characterization of the evidence.

11 162. Paragraph 162 consists of Plaintiff's characterization of the evidence, which does
12 not require a response. If the Court requires a response, Defendants deny Plaintiff's
13 characterization of the evidence.

14 163. Paragraph 163 consists of Plaintiff's characterization of the evidence, which does
15 not require a response. If the Court requires a response, Defendants deny Plaintiff's
16 characterization of the evidence.

17 164. Defendants lack knowledge or information sufficient to answer the allegation in
18 Paragraph 164 and, therefore, deny that allegation.

19 165. Defendants admit the allegation in Paragraph 165.

20 166. Paragraph 166 consists of Plaintiff's characterization of USCIS's decision to deny
21 his petition, which does not require a response. If the Court requires a response, Defendants deny
22 Plaintiff's characterization of the agency's decision.

1 167. Paragraph 167 consists of Plaintiff's characterization of the evidence, which does
2 not require a response. If the Court requires a response, Defendants deny Plaintiff's
3 characterization of the evidence.

4 168. Defendants admit the allegations in Paragraph 168.

5 169. Defendants deny the allegation in Paragraph 169.

6 170. Defendants deny the allegations in Paragraph 170.

7 171. Defendants deny the allegation in Paragraph 171.

8 172. Defendants admit the allegation in Paragraph 172.

9 173. Defendants admit the allegation in Paragraph 173.

10 174. Defendants admit the allegation in Paragraph 174.

11 175. Defendants admit the allegation in Paragraph 175.

12 176. Paragraph 176 consists of Plaintiff's characterization of USCIS's decision to deny
13 his petition, which does not require a response. If the Court requires a response, Defendants deny
14 Plaintiff's characterization of the agency's decision.

15 177. Defendants admit the allegation in Paragraph 177.

16 178. Paragraph 178 consists of Plaintiff's characterization of the evidence, which does
17 not require a response. If the Court requires a response, Defendants deny Plaintiff's
18 characterization of the evidence.

19 179. Paragraph 179 consists of Plaintiff's characterization of the evidence and
20 USCIS's decision, which does not require a response. If the Court requires a response,
21 Defendants deny Plaintiff's characterization of the evidence and the agency's decision.

1 180. Paragraph 180 consists of Plaintiff's characterization of the evidence and
2 USCIS's decision, which does not require a response. If the Court requires a response,
3 Defendants deny Plaintiff's characterization of the evidence and the agency's decision.

4 181. Defendants deny the allegation in Paragraph 181.

5 182. Defendants deny the allegation in Paragraph 182.

6 183. Defendants admit the allegations in Paragraph 183.

7 184. Defendants deny the allegation in Paragraph 184.

8 185. Defendants deny the allegation in Paragraph 185.

9 186. Defendants admit the allegation in Paragraph 186.

10 187. Defendants admit the allegation in Paragraph 187.

11 188. Defendants admit the allegations in Paragraph 188.

12 189. Paragraph 189 consists of Plaintiff's characterization of USCIS's decision to deny
13 his petition, which does not require a response. If the Court requires a response, Defendants deny
14 Plaintiff's characterization of the agency's decision.

15 190. Defendants deny the allegation in Paragraph 190.

16 191. Paragraph 191 consists of Plaintiff's characterization of USCIS's decision to deny
17 his petition, which does not require a response. If the Court requires a response, Defendants deny
18 Plaintiff's characterization of the agency's decision.

19 192. Defendants deny the allegation in Paragraph 192.

20 193. Defendants deny the allegations in Paragraph 193.

21 194. Defendants deny the allegation in Paragraph 194 (which Plaintiff re-numbered as
22 a second Paragraph 1).

CLAIM FOR RELIEF

Plaintiff's re-numbered Paragraphs 2 through 22 contain allegations, which include legal arguments, that USCIS's actions were arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). Defendants deny all allegations in these paragraphs because Defendants' actions were not arbitrary and capricious, and did not violate the APA. Defendants also deny that Plaintiff is entitled to any relief in this case.

PLAINTIFF'S RELIEF REQUESTED

This section of Plaintiff's First Amended Complaint contains seven separate prayers for relief. Defendants deny the prayers for relief in all seven statements. Defendants deny that Plaintiff is entitled to any relief in this case.

GENERAL DENIAL

Defendants deny all allegations not specifically admitted herein.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's First Amended Complaint and as separate affirmative defenses, Defendants state as follows:

1. Plaintiff's First Amended Complaint and each cause of action therein fail to state a claim upon which the Court can grant any relief.

2. All actions taken by Defendants were grounded in good faith, and are not in violation of any federal law or the United States Constitution.

3. Although Defendants presently do not have specific facts in support of their remaining defenses, should facts arise that support the affirmative defenses as set forth in Fed. R. Civ. P. 8, Defendants put Plaintiff on notice that Defendants will raise the following affirmative

1 defenses, including but not limited to: estoppel, res judicata, statute of limitations, waiver, and
2 fraud.

3 4. Defendants may seek leave to amend this answer as necessary.

4 **DEFENDANTS' PRAYER FOR RELIEF**

5 WHEREFORE, Defendants having answered fully Plaintiff's First Amended Complaint,
6 respectfully request that the Court enter judgment denying each and every prayer for relief by
7 Plaintiff, dismiss this action, and grant such other relief to Defendants as the Court deems just
8 and proper.

9
10 Dated: May 15, 2020

Respectfully submitted,

11
12 JOSEPH H. HUNT
13 Assistant Attorney General
Civil Division

14
15 WILLIAM C. PEACHEY
16 Director, District Court Section
17 Office of Immigration Litigation

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19 GLENN M. GIRDHARRY
20 Assistant Director

21
22 By: s/ Elizabeth D. Kurlan
23 ELIZABETH D. KURLAN
24 Trial Attorney
25 United States Department of Justice
26 Civil Division
27 Office of Immigration Litigation
28 District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: 415-871-6455
Email: Elizabeth.Kurlan@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

By: s/ Elizabeth D. Kurlan
ELIZABETH D. KURLAN
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation,
District Court Section